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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Kenny Alexander Coy Sajche

Petitioner,

v.

WARDEN, in their official capacity as Warden of Delaney Hall Detention Facility; JOHN TSOURKARIS, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 2:25-cv-13726

**COMPLAINT AND PETITION FOR A
WRIT OF HABEAS CORPUS**

**COMPLAINT AND PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner Kenny Alexander Coy Sajche (“Mr. Coy” or “Petitioner”) respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner’s unlawful detention by Respondents, pursuant to 28 U.S.C. § 2241. In the alternative, Petitioner seeks injunctive and declaratory relief pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* and 28 U.S.C. § 2201, the Declaratory Judgment Act.

INTRODUCTION

1. Petitioner Kenny Alexander Coy Sajche (“Mr. Coy” or “Petitioner”) remains in ICE custody at the Delaney Hall Detention Facility (“Delaney Hall”) in New Jersey, separated from his family, despite an Immigration Judge (“IJ”) granting him bond. He remains detained because the Department of Homeland Security (“DHS”) filed a Form E-43, Notice of Service Intent to Appeal Custody Redetermination (“E-43”) under 8 C.F.R. § 1003.19(i)(2), without stating any basis for their appeal before the IJ. Mr. Coy’s continued detention is unlawful because it violates his substantive and procedural Fifth Amendment right to due process, and DHS’ actions are arbitrary, capricious, and an abuse of discretion under 5 U.S.C. § 706(2), and he requests that this Court order his immediate release from ICE custody on bond. Without intervention from this Court, Mr. Coy will remain unconstitutionally detained.

JURISDICTION & VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

3. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore*, 538 U.S. at 516–17; *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

4. Federal courts also have federal question jurisdiction, through the Administrative Procedure Act (“APA”), to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Mr. Coy after the IJ granted him bond has adversely and severely affected Mr. Coy’s liberty and freedom.

5. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at least one of the Respondents is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this district. 28 U.S.C. § 1391. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out traditional venue factors) (holding that venue lies where it is most convenient, where “material events took place,” and where “records and witnesses pertinent to petitioner’s claim are likely to be found.”). Mr. Coy is detained in Newark, New Jersey and his removal proceedings are pending before the Elizabeth Immigration Court. *See ICE Detainee Locator*.

PARTIES

9. Petitioner Kenny Alexander Coy Sajche is a native and citizen of Guatemala who was granted an IJ bond on July 14, 2025, and has a pending I-589, Application for Asylum, Withholding of Removal, and relief under the Convention Against Torture before the Immigration Court. He is currently detained at Delaney Hall.

10. The Warden of Delaney Hall is an employee of GEO Group, the private company that contracts with ICE to run Delaney Hall. In their capacity as Warden, they oversees the administration and management of Delaney Hall. Accordingly, the Warden is the immediate custodian of Mr. Coy. They are sued in their official capacity.

11. John Tsoukaris is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Newark Field Office (“Newark ICE”) and is the federal agent charged with overseeing all ICE detention centers in New Jersey, including Delaney Hall. Mr. Tsoukaris is a legal custodian of Mr. Coy. He is sued in his official capacity.

12. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Mr. Coy. She is sued in her official capacity.

13. Pamela Bondi, Attorney General is named in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of federal immigration law, directly and by delegation to the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey and is legally responsible for adjudicating Petitioner’s removal and custody-redetermination proceedings and for determining the standards and jurisdictional limitations in those proceedings.

As such, she is a legal custodian of Petitioner. Respondent Bondi's office is located at the U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001

STATEMENT OF FACTS

14. Mr. Coy was born in Coban Alta Verapaz in Guatemala. Mr. Coy entered the United States on approximately April 22, 2021, fleeing persecution of a criminal group based on his Mayan indigenous ethnicity. *See* Exhibit F, Respondent's Evidence in Support of Custody Redetermination Hearing, dated July 11, 2025.

15. On June 3, 2025, DHS ICE Enforcement Removal Operation, Mount Laurel Fugitives Operation Officers arrested Mr. Coy while the officers were seeking to arrest a different person, Miguel Sajche Caal. *See* Exhibit J, Form I-213, Record of Deportable/Inadmissible Alien of Kenny Alexander Coy Sajche. DHS admits that they did not have a warrant to arrest Mr. Coy. *Id.* Mr. Coy, therefore, was a collateral arrest.

16. Mr. Coy is detained pursuant to 8 U.S.C. § 1226(a), which governs the detention of noncitizens who may, but are not required to, be arrested and detained pending a decision of whether they should be removed from the United States.

17. On July 7, 2025, Mr. Coy requested a custody redetermination, also known as a bond hearing, before the Immigration Judge ("IJ"). *See* Exhibit E, Respondent's Motion for Custody Redetermination Hearing, dated July 7, 2025.

18. On July 10, 2025, DHS filed a Form I-213, Record of Deportable/Inadmissible Alien, "RAP Sheet," and "New Jersey Court case information," regarding an entirely different person, Mr. German Eduardo Gomez, who allegedly has a criminal arrest in New Jersey, in support of their request to deny Mr. Coy's release from DHS custody. *See* Exhibit H, Form I-213, Record of Deportable/Inadmissible Alien of German Eduardo Gomez; Exhibit I, Department of Homeland

Security's Notice of Filing of Evidence, dated July 10, 2025. Mr. Coy does not have a criminal record.

19. On July 11 and 13, 2025, Mr. Coy submitted evidence in support of his bond hearing, proving that he is not a flight risk nor a danger to society, and should be released on a bond. *See* Exhibit F, Respondent's Evidence in Support of Custody Redetermination Hearing, dated July 11, 2025; Exhibit G, Respondent's Supplemental Evidence in Support of Custody Redetermination Hearing, dated July 13, 2025.

20. On July 14, 2025, the day of Mr. Coy's bond hearing, DHS conceded that Mr. Coy was detained under its discretionary authority under 8 U.S.C. § 1226(a) rather than the mandatory detention provisions of § 1226(c). *See* Exhibit B, Declaration of Kenny Alexander Coy Sajche, dated July 24, 2025.

21. Mr. Coy, through counsel, objected to DHS's submitted evidence that had no bearing on Mr. Coy's bond eligibility, risk of flight, or danger to society. The IJ agreed. DHS then submitted a corrected Form I-213, Record of Deportable/Inadmissible Alien into the bond proceedings, at the request of the IJ. *See* Exhibit J, Form I-213, Record of Deportable/Inadmissible Alien of Kenny Alexander Coy Sajche.

22. Mr. Coy argued, through counsel, that he was not a flight risk nor a danger to society and, therefore, should be released on a bond. DHS conceded that Mr. Coy was not a danger to society but argued that Mr. Coy was a flight risk. The IJ agreed that Mr. Coy was not a danger to society and found that a \$12,500 bond would mitigate any risk of flight. *See* Exhibit B, Order of the Immigration Judge, dated July 14, 2025; Exhibit C, Declaration of Kenny Alexander Coy Sajche, dated July 24, 2024.

23. DHS reserved appeal. The IJ asked DHS why it reserved appeal. DHS stated that the agency was reserving appeal on *all* bond determinations and that the agency would formulate their arguments on appeal at a later date. *See* Exhibit B, Order of the Immigration Judge, dated July 14, 2025.

24. On July 15, 2025, DHS filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. *See* Exhibit A, Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, dated July 15, 2025.

25. Because DHS had filed Form EOIR-43, Mr. Coy's bond sponsor was prevented from paying the \$12,500 bond set by the IJ to effectuate Mr. Coy's release. *See* Exhibit K, Email Exchange with Envision Freedom Fund, dated July 15, 2025. Therefore, he remains detained at Delaney Hall despite having been granted release by the IJ.

CLAIMS FOR RELIEF

COUNT I (SUBSTANTIVE DUE PROCESS)

26. Petitioner incorporates, by reference, the paragraphs above.

27. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 687; *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976) ("There are literally millions of aliens within the jurisdiction of the United States ... [t]he Fifth Amendment as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law.") (internal citations omitted); *Yamataya v. Fisher*, 189 U.S. 86 (1903). Substantive due process "prevents the government from engaging in conduct that shocks the conscience ... or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) (internal citations omitted).

28. The substantive Due Process requirement of the Fifth Amendment prohibits “the government from infringing on certain fundamental rights at all . . . unless narrowly tailored to serve a compelling government interest.” *See Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439 (1993); *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). There is no question that freedom from physical restraint is a fundamental liberty interest. *See Reno v. Flores*, 507 U.S. at 302. Because a fundamental right is implicated, the government must prove that the provision at issue is narrowly tailored to meet a compelling governmental interest. *Reno v. Flores*, 507 U.S. at 301–02.

29. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V. “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This vital liberty interest is at stake when an individual is subject to detention by the DHS. *See Zadvydas*, 121 S. Ct. at 2498 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem”); *Kiareldeen v. Reno*, 71 F. Supp. 2d 402, 409–10 (D.N.J. 1999) (in analyzing due process in the immigration context, that the first factor in the procedural due process analysis, “the Petitioner’s private interest in his physical liberty, must be accorded the utmost weight”).

30. The regulation at 8 C.F.R. § 1003.19(i)(2), as applied to Mr. Coy, keep Petitioner detained despite the bond issued by the IJ, is not narrowly tailored to a compelling governmental interest. In this case, an IJ found that Petitioner was not a danger to the community nor such a sufficient flight risk that could not be mitigated by a bond. DHS applied 8 CFR 1003.19(i)(2) to override the IJ’s decision that Petitioner should be released on bond., without making any

individualized determination or evidence the IJ's set bond was not sufficient to mitigate Mr. Coy's risk of flight. The regulations permit the DHS to override the IJ's decision pending its appeal without consideration of the individual facts by any independent arbiter. But for intervention by this Court, Petitioner has no means of release pending the DHS' decision to appeal the IJ's bond determination to the Board of Immigration Appeals ("BIA") within 10 days of the IJ's bond grant. Thus, continued detention at this point under the regulation violates Petitioner's due process rights. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 668–69 (D.N.J. 2003); *see also Mohammed H. v. Trump*, No. CV 25-1576-JWB-DTS, Doc. 28, *12-13 (D. Minn. May 5, 2025).

31. In *Ashely v. Ridge*, the District Court of New Jersey found that "the automatic stay provision" violated that petitioner's due process rights because it "renders the Immigration Judge's bail determination an empty gesture." 288 F. Supp. 2d 662, 668–69 (D.N.J. 2003); *see also Zavala v. Ridge*, 310 F.Supp. 1071, 1077 (N.D. Cal. 2004) ("The regulation, which permits unilateral government detention of individuals without a case-by-case determination after a reasoned finding that they do not pose threat to safety or a risk of flight, violates the Due Process Clause because no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint."). In *Ashely*, the Court went on to find that "the purpose for the automatic stay provision is to prevent the [noncitizen] from fleeing and to protect the public from harm." *Id.* at 669. However, "[t]he bond determination made by the Immigration Judge has already addressed these underlying concerns." *Id.* As DHS has done in this case, "the Government," in *Ashely*, "offer[ed] no reason to believe that Petitioner may flee to avoid deportation, or that he might pose a potential danger to the community." *Id.*

32. The District Court of Minnesota recently agreed with the Court's decision in *Ashely*, in finding that "Government's use of the automatic stay in Petitioner's case raises a substantial

Fifth Amendment claim” because “it does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge.” *Mohammed H. v. Trump*, No. CV 25-1576-JWB-DTS, Doc. 28, *12-13 (D. Minn. May 5, 2025). The District Court of Minnesota found that “[w]ithout introducing evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case for continued detention.” *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 348–49 (1976)).

33. Here, DHS’s filing of an automatic stay on Petitioner’s release on bond, without an individualized determination and absent evidence to support that he is a danger to society or a flight risk that would not be mitigated by a bond, is a violation of Petitioner’s substantive due process rights.

COUNT TWO
(PROCEDURAL DUE PROCESS)

34. Petitioner realleges and incorporates by reference the paragraphs above.

35. The procedural Due Process requirement of the Fifth Amendment entitles a person to be heard at a meaningful time and in a meaningful manner before a deprivation of liberty occurs. *Mathews*, 424 U.S. at 334. The process that is due depends upon the private interest affected by the official action, the risk of erroneous deprivation of the interest, the value (if any) of additional or substitute procedural safeguards, and the government’s interest, including fiscal and administrative burdens that additional or substitute procedural requirements would impose. *Mathews*, 424 U.S. at 335.

36. Procedural due process here requires a custody hearing before an independent and impartial adjudicator that is adhered to by the detainee’s custodian. *See Marcello v. Bonds*, 39 U.S. 302, 307, 75 S.Ct. 757 (1955); *Morrissey v. Brewer*, 408 U.S. 471, 486-7, 92 S. Ct. 2593 (1972); *United States v. Garcia-Martinez*, 228 F.3d 956, 961 (9th Cir. 2000); *Castro-Cortez v. INS*, 239

F.3d 1037 (9th Cir. 2001); *Cabreja-Rojas v. Reno*, 999 F. Supp. 493, 496–97 (S.D.N.Y. 1998); *St. John v. McElroy*, 917 F. Supp. 243, 249–51 (S.D.N.Y. 1996); *Ekehor v. Aljets*, 979 F.Supp. 640 (N.D. Ill. 1997); *cf. Kiareldeen v. Reno*, 71 F. Supp. 2d 402, 418–19 (“access to a neutral judge [is] one of the ‘most basic of due process protections’”) (quoting *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996)). “This procedural due process requirement applies to deportation proceedings for aliens as well.” *See Flores*, 507 U.S. at 306, 113 S.Ct. 1439 (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); *Beshli*, 272 F.Supp.2d at 522 (same).

37. For detained noncitizens, like Petitioner, “[t]he private interest at stake here,” is “freedom from confinement,” that is considered “highest constitutional import.” *Ashley*, 288 F. Supp. at 670 (citing *St. John v. McElroy*, 917 F. Supp. 243, 250 (S.D.N.Y.1996)). The government’s “regulatory interest” in safeguarding the community can “outweigh an individual’s liberty interest,” but only when the government can prove that a noncitizen “presents an identified and articulable threat to an individual or the community so as to justify his continued detention without any judicial review of the need for a stay of the bail determination.” *Id.* (internal citation omitted). Here, DHS made no individualized determination. On the contrary, DHS conceded that Mr. Coy was not a danger to society and yet invoked an automatic stay to prevent his release on bond.

38. The automatic stay provision under 8 C.F.R. § 1003.19(i)(2) permits DHS to continue a noncitizens’ detention “no matter of how frivolous,” because it fails to require a “demonstration of the likelihood of success of the merits[.]” *Id.* (internal citation omitted).

39. Mr. Coy cannot expect reprieve from the BIA because administrative courts do not have jurisdiction over constitutional claims. *See Ashley*, 288 F. Supp. 2d at 667 (finding that the IJ nor the BIA have jurisdiction over constitutional claims). Even if Mr. Coy were to attempt to assert

his right to release on bond before the BIA, the court has become an overwhelmingly partisan body after nine members were abruptly fired in February. *See* Rachel Uranga, *Trump Fires More Immigration Judges in What Some Suspect Is a Move to Bend Courts to His Will*, L.A. TIMES (Apr. 23, 2025), <https://www.latimes.com/california/story/2025-04-23/immigration-judges>. The administration has pushed to reduce the size of the BIA to promote ideological uniformity amongst its members, with Executive Office for Immigration Review (“EOIR”) having stated that “[t]he substantial increase in the number of Board members over the past 10 years has diminished the cohesiveness of the Board’s decision-making process, causing the process of issuing precedent decisions to become more time-consuming and challenging. . . . As the number of Board members has increased, a greater number of votes has been required to . . . designate a decision as precedent.” Reducing the Size of the Board of Immigration Appeals, 90 Fed. Reg. 15525, 15526-27 (proposed Apr. 14, 2025) (to be codified at 8 C.F.R. § 1003). The BIA’s lack of neutral, independent decision-makers has resulted in the BIA designated 25 decisions—all adverse to noncitizens—as precedential in the last five months. *See* U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., Board of Immigration Appeals, <https://www.justice.gov/eoir/volume-29> (last updated July 18, 2025). By contrast, the BIA issued 14 precedential decisions in all of 2024, with a far more diverse array of outcomes. Reducing the Size of the Board of Immigration Appeals, 90 Fed. Reg. 15525, 15527 (proposed Apr. 14, 2025) (to be codified at 8 C.F.R. § 1003); *see also* U.S. Dep’t of Justice, Exec. Off. for Immigr. Rev., Board of Immigration Appeals Precedential Decisions, Vol. 28, <https://www.justice.gov/eoir/volume-28> (last updated Jan. 17, 2025). Therefore, relief from this Court is necessary to prevent Mr. Coy’s unconstitutional detention.

40. Here, the private interest affected by the statute is of the highest importance, namely, a fundamental liberty interest in being free from physical restraint. Second, the risk of

erroneous deprivation of liberty is great in light of the fact that Petitioner is not subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c), and an immigration judge has held a full hearing and has determined that Petitioner should be released on bond. Third, adhering to the IJ's decision to grant bond does not burden the government nor does not prevent DHS from appealing an IJ decision to the BIA, if DHS finds error in the IJ's determination. *See Mathews*, 424 U.S. at 321.

COUNT THREE
(ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))

41. Petitioner realleges and incorporates by reference the paragraphs above.

42. Under the APA, Courts are empowered to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

43. DHS's invocation of an automatic stay in Petitioner's case, without any individualized basis or showing that Petitioner poses a danger or flight risk, to prevent his release on bond runs afoul of U.S.C. § 706(2)(A) because it is arbitrary, capricious, and contrary to law in violation of the APA. It is especially arbitrary and capricious given that Respondents conceded that Petitioner poses no danger. The invocation of the automatic stay was made against Petitioner without any consideration of or justification based on his particular facts. It should therefore be set aside by this Court.

44. As a remedy, this Court should conduct its own review of Petitioner's custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

- b. Declare that Petitioner's continued detention is contrary to law and unconstitutional and declare that DHS's use of the automatic stay provision, against Petitioner, is unconstitutional and unlawful;
- c. Issue an Order that DHS release Petitioner pursuant to the terms set forth by the Immigration Judge in his decision, issue an Order that the automatic stay 8 C.F.R. § 1003.19(i)(2) violates due process in this case, and vacate the use of the automatic stay under 8 C.F.R. § 1003.19(i)(2) as applied to Petitioner;
- d. Order Petitioner's immediate release on bond set by the IJ on July 14, 2025; and,
- e. Grant any other further relief this Court deems just and proper.

Dated: July 24, 2025

Respectfully submitted,

/s/ Priscila D. Abraham

Priscila D. Abraham, Esq.

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: July 24, 2025

Respectfully submitted,

/s/ Priscila D. Abraham

Priscila D. Abraham

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Dated: July 24, 2025

s/ Priscila D. Abraham
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